



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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August 9th, 2000

Minutes of the August 9th, 2000, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission Hearing Room, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Michael Carpenter, Hon. Virginia Constantine, Dr. Linda W. Cronkhite, and Hon. Harriet P. Henry; Executive Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Diana True.

Chairman Webster called the meeting to order at 9:05 a.m.

In keeping with its practice of addressing agenda items to accommodate those personally present first, the Commission considered items on the published agenda as follows:

Agenda Item #4: Inquiry by Mr. Morrison Bonpasse Regarding Propriety of Endorsements by “Public Officials”

By letter dated June 19th, 2000, Mr. Bonpasse questioned the appropriateness of endorsements by “public officials” in their official capacities in the form of “letters to the editors” of two House District 58 newspapers. Consideration of this matter was tabled from the July 12th, 2000 meeting. Based upon the information provided in correspondence from Ms. Mary Brewer, Managing Editor, *Boothbay Register*, and Mr. John Lisnik, Assistant to the Chancellor for Governmental Relations, the Commission concluded that the letters in question were probably altered in form by Ms. Brewer, based upon the stated editorial policy of the *Boothbay Register*, and without the intent for them to appear as “endorsements” rather than the “thank you” notes of their original form. Therefore, Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to take no further action in this matter.

Agenda Item #5: Inquiry by Mr. Arnold Woolf Regarding the Impact of Contribution Reporting and Independent Expenditures

By letter dated June 28th, 2000, Mr. Woolf inquired regarding the reporting requirements for expenditures by another that may benefit a Clean Election Act candidate and how to counter last minute expenditures on behalf of a nonparticipating opponent. Consideration of this matter was tabled from the July 12th, 2000 meeting pending receipt of a copy of the communication in question. Mr. Hain presented a letter from Kurt W. Adams, Esq., on behalf of Candidate Deborah Simpson, District #73 that explained the expenditure in question and provided an amended report providing additional information that served to help resolve the issue. Based on

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that letter and the information provided by the amended report, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted unanimously to take no further action in this matter.

Agenda Item #1: Ratification of Minutes

Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to approve the minutes of the July 12th, 2000, meeting as distributed.

Agenda Item #6: Maine People's Alliance

Mr. Hain presented a letter dated July 21st, 2000, from Mr. John Dieffenbacher-Krall, Executive Director of the Maine People's Alliance, regarding the reporting requirements for certain membership communications made in connection with June 13, 2000, primary election. Mr. Hain suggested that he respond to the letter, as appropriate. The Commission determined that no further action was required.

Agenda Item #7: James A. Banks, Sr. Request for Waiver of Late Filing Penalty

Mr. Banks requested a waiver of the penalty for the late filing of his 6-day pre-primary campaign finance report based on delays in postal service over which he had no control. The Commission considered the facts presented by Mr. Hain regarding the postmarked dates on the envelopes. Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to waive the penalty of \$22.82.

Agenda Item #8: Hon. Patrick E. Colwell, Receipt of Contribution in Excess of Limits

Representative Colwell improperly received and accepted a contribution of \$250 in excess of the statutory contribution limits from the same organization, CMP Group [Employees]. Upon notification of that fact, discovered during a routine review of campaign finance reports, Mr. Colwell took immediate steps to return the excess contribution. He provided evidence to that effect, along with a letter of apology from the contributor explaining that the contribution had been made in error due to internal organizational accounting deficiencies that have been corrected. Based on that information, Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to take no further action.

Agenda Item #9: Other; Meeting with Committee on Legal and Veterans Affairs

Chairman Webster reported on the results of the meeting between the Commission, represented by Chairman Webster, Judge Henry, and Ms. Constantine, and the Committee on Legal and Veterans' Affairs, which has budgetary oversight regarding the Commission. He noted particularly the interest expressed by Senators Carey and Ferguson in the subject of the Commission's action regarding so-called "leadership political action committees (PACs)" and directed that a letter be prepared and sent to them with information regarding the Commission's action.



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Agenda Items #2 and #3: Rotundo - Madore (Senate District 21) Primary Election (impact of “independent expenditures” on Maine Clean Election Act candidate matching fund eligibility) and Inquiry by Mr. James J. Campbell, Sr. (impact of “independent expenditures” on Maine Clean Election Act candidate matching fund eligibility)

By letter dated June 13th, 2000, Ms. Lorraine T. Comeau forwarded for Commission action three (3) flyers endorsing State Senate candidate, District 21, Ms. Margaret (Peggy) Rotundo for the June 13th primary election. The AFL-CIO initiated two of the flyers and Maine State Employees Association (MSEA) Political Action initiated the third. Also, by letter dated June 15th, 2000, Mr. Campbell requested a determination of the legality of the “Election Alert” from the National Rifle Association Political Victory Fund to vote for Mr. Michael McAlevey in the Republican primary for Senate District 34. Consideration of this matter was tabled from the July 12th, 2000 meeting. Since the legal issues are the same in each case, the Commission decided to consider them together.

Mr. Hain presented for consideration by Commission members a written argument for treating membership communications that expressly advocate the election or defeat of a clearly identified candidate as “independent expenditures” for the purpose of computing matching fund eligibility for an opposing Maine Clean Election Act (MCEA) candidate, notwithstanding the fact that they may be expressly excluded from the definition of “expenditure” in 21-A M.R.S.A.

§1012(3)(B)(3). He also suggested a series of questions to be answered by Commission members as an approach for consideration of the legal issues.

Judge Henry made a statement expressing her views on the issues and explaining her reasoning therefore. Thereafter, Chairman Webster guided the Commission through consideration of the issues presented by considering the questions prepared for that purpose. The results of the actions taken on each of the questions presented follow:

(1) Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously that the Commission find that under the last sentence of § 1019(2), both the Maine AFL-CIO and the MSEA had a duty to report what they spent on the express advocacy communications to their members that are at issue before the Commission.

(2) Ms. Constantine moved, Ms. Cronkhite seconded, and Commission members voted 4-1 (Mr. Carpenter opposed) that the Commission interpret 21-A M.R.S.A. § 1019(2) to mean that a membership organization has an obligation to report the amount spent on express advocacy communications by that organization to its members when and if it spends more than \$50 in the aggregate for all candidates in that election and not on a per candidate basis.

(3) Judge Henry moved that the amount spent on express advocacy communications by membership organizations triggers matching funds for MCEA purposes. No second was offered and the motion failed. Ms. Constantine then moved, Mr. Carpenter seconded, and the Commission voted 4-1 (Judge Henry opposed) that the Commission interpret the provisions of 21-A M.R.S.A. § 1019(2) to mean that a membership communication that is reportable under the last sentence of that subsection is not equivalent to an “independent expenditure” under § 1019



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and Chapter 1 § 8 of the Commission's Rules and, therefore, that it does not trigger the provision of matching funds to a MCEA candidate pursuant to 21-A M.R.S.A. § 1125(9).

Chairman Webster announced a brief recess at 11:05 a.m. and the Commission reconvened at 11:12 a.m. and continued consideration of the question begun above as follows:

(4) Mr. Carpenter moved, Ms. Constantine seconded, and the Commission voted 4-0 (Judge Henry abstaining) that the Commission find that the AFL-CIO and the MSEA did not violate any statutory provisions that would warrant the imposition of a penalty or penalties, such as for the late filing of a report pursuant to the requirements of the campaign finance reporting provisions, or for a violation of the Maine Clean Election Act pursuant to 21-A M.R.S.A. § 1127.

Based on the determinations made by the Commission pursuant to this matter, Mr. Hain was instructed to prepare a form for membership organizations and corporations to report express advocacy communications to their members and stockholders, respectively.

Agenda Item #9: Other; U.S. Treasury Department Letter Regarding So-called "Section 527" Political Organizations

Commission members instructed Mr. Hain to communicate with the U.S. Internal Revenue Service and the State's political parties to express the Commission's decision that the Commission staff is in a position (because of personnel and financial constraints) to provide only limited assistance in response to the IRS request, and that the Commission will place a copy of the IRS information on the Commission's Internet web site for the benefit of candidates, political committees, party committees, and political action committees.

Chairman Webster inquired of Counsel Gardiner regarding the status of her research into the matter of push-polling in anticipation of the need for the Commission to take regulatory action pursuant to a legislative resolve. Counsel Gardiner responded that she was still gathering information and expected to present her preliminary results to the Commission at the September meeting.

Ms. Constantine inquired about the status of activity regarding the lobbyist disclosure issue that had arisen at the April and May meetings. Mr. Hain responded that that subject would be included on the agenda for the September meeting.

Commission members agreed to schedule the September meeting on September 14th, 2000, instead of the regular date.

There being no further business, on motion and unanimous vote, the Commission adjourned at 11:37 a.m.

Respectfully submitted,

William C. Hain, III
Executive Director

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